UNAPPROVED AND SUBJECT TO CHANGE
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF THE MEETING, Public Session

December 13, 2002

Call to order: Chairman Karen Getman called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:41 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Getman, Commissioners Sheridan Downey, Thomas Knox, and Gordana Swanson were present.

Items #21, #22, #23, #25, #26, #27, #28, #29, and #30.

There being no objection, the Commission approved the following items on the consent calendar:

Item #21. ***In the Matter of Shawn Boyd,*** **FPPC No. 01/513.** (1 count.)

Item #22. ***In the Matter of Richard Ferreira,*** **FPPC No. 02/805.** (1 count.)

Item #23. ***In the Matter of Douglas Ferrarelli,*** **FPPC No. 98/615.** (3 counts.)

Item #25. ***In the Matter of Committee for a Quality Education and Del H. Guyer,*** **FPPC No. 00/704.** (1 count.)

Item #26. ***In the Matter of Christopher G. Wilson, Committee to Elect Christopher G. Wilson Judge of the Superior Court, and Lelona R. Songy,*** **FPPC No. 2000/824.** (1 count.)

Item #27. ***In the Matter of Anthony Villafranca and Friends to Elect Tony Villafranca,*** **FPPC No. 99/297.** (1 count.)

Item #28. Failure to Timely File Late Contribution Reports - Proactive Program.

a. ***In the Matter of AB & I,*** **FPPC No. 2002-781.** (1 count.)

b. ***In the Matter of All American Asphalt-All American Aggregates,*** **FPPC No. 2002-698.** (1 count.)

c. ***In the Matter of Californula Broadcasting,*** **FPPC No. 2002-783.** (1 count.)

d. ***In the Matter of Chandar Power Systems, Inc.,*** **FPPC No. 2002-701.** (1 count.)

e. ***In the Matter of Pierre P. Claeyssens,*** **FPPC No. 2002-702.** (1 count.)

f. ***In the Matter of De Francesco & Sons*, FPPC No. 2002-784.** (2 counts.)

g. ***In the Matter of William H. Draper III & Phyllis C. Draper Trust*, FPPC No. 2002-785.** (1 count.)

h. ***In the Matter of Komatsu America International Company*, FPPC No. 2002-709.** (1 count.)

i. ***In the Matter of Thomas E. Larkin, Jr.*, FPPC No. 2002-776.** (1 count.)

j. ***In the Matter of Katrina Leung*, FPPC No. 2002-786.** (1 count.)

k. ***In the Matter of Liberty Mutual Insurance*, FPPC No. 2002-787.** (1 count.)

l. ***In the Matter of Carl Lindner*, FPPC No. 2002-710.** (1 count.)

m. ***In the Matter of Thomas McKernan*, FPPC No. 2002-788.** (1 count.)

n. ***In the Matter of T. Willem Mesdag*, FPPC No. 2002-770.** (1 count.)

o. ***In the Matter of Milberg Weiss Bershad Hynes & Lerach LLP*, FPPC No. 2002-771.** (1 count.)

p. ***In the Matter of Miller Brothers Investments, LLC*, FPPC No. 2002-712.** (1 count.)

q. ***In the Matter of O.C. Jones & Sons, Inc.*, FPPC No. 2002-714.** (2 counts.)

r. ***In the Matter of Peterson Tractor Company*, FPPC No. 2002-773.** (1 count.)

s. ***In the Matter of Race Investments LLC*, FPPC No. 2002-789.** (1 count.)

t. ***In the Matter of RGW Construction*, FPPC No. 2002-777.** (1 count.)

u. ***In the Matter of Robertson, Vick & Capella, LLP*, FPPC No. 2002-722.** (5 counts.)

v. ***In the Matter of Southland Windows, Inc.*, FPPC No. 2002-775.** (1 count.)

w. ***In the Matter of Thomas Steyer*, FPPC No. 2002-717.** (1 count.)

x. ***In the Matter of Visionquest Industries, Inc.*, FPPC No. 2002-724.** (1 count.)

y. ***In the Matter of Selim K. Zilkha*, FPPC No. 2002-780.** (1 count.)

Item #29. Failure to Timely File Late Contribution Reports - Proactive Program.

a. ***In the Matter of Julie Simon Munro*, FPPC No. 2002-713.** (2 counts).

b. ***In the Matter of Election Systems & Software*, FPPC No. 2002-704.** (2 counts).

Item # 30. *In the Matter of Bernardo M. Perez*, FPPC Nos. 02/745. (1 count).

Item #1. Approval of the Minutes of the October 4, 2002, Commission Meeting.

There being no objection the minutes were approved.

Item #2. Public Comment

There was no public comment.

Item #3. Cost of Living Adjustment for Campaign Contribution Limits and Voluntary Expenditure Ceilings: Adoption of Regulation 18545.

Commission Counsel Galena West explained that the proposed regulation implemented the cost of living adjustment formula that was already adopted in regulation 18544. The adjustment occurs every two years to reflect the changes in the annual average California Consumer Price Index. The regulation includes the limit and expenditure numbers for each type of contribution or expenditure, with the amounts rounded to the next $100 for contributions and the next $1,000 for expenditure ceilings pursuant to § 83124.

Ms. West distributed a chart to the Commission, explaining that it illustrated how each amount was calculated. The proposed regulation will apply to all elections held between January 1, 2003 to December 31, 2004. Ms. West explained that subdivision (d) was added to clarify what would happen if the next adjustment was not finished on time, providing guidance for elections held after December 31, 2004 and before the Commission readjusted the amounts.

Ms. West distributed a revised proposed regulation, incorporating suggestions from the Chairman. She noted that page 1, lines 5 and 17 were changed to add the words "candidates" and "seats" for clarification purposes. Ms. West explained that page 3, subsection (b)(4) was changed to add the language, "a candidate for" to clarify that the limits will apply to candidates for offices and not the offices themselves.

Chairman Getman explained that the statute requires COLA adjustments for contribution limits every two years. It is a little difficult for statewide offices because elections are held every four years. The draft regulation encompasses a policy consideration that if the COLA currently in effect is adjusted downward in two years, the fundraising that is currently taking place for 2002 elections will not be affected and candidates will not have to return money. She noted that deflation could cause that downward adjustment.

Commissioner Downey moved that the regulation be approved.

Commissioner Knox seconded the motion.

Commissioners Downey, Swanson, Knox and Chairman Getman voted "aye". The motion carried by a vote of 4-0.

Item #4. Proposition 34 Regulations: Permanent Adoption of Regulation 18535 -- Restrictions on Contributions Between State Candidates.

Commissioner Swanson moved approval of the proposed regulation.

Commissioner Downey seconded the motion.

Commissioners Downey, Swanson, Knox and Chairman Getman voted "aye". The motion carried by a vote of 4-0.

Item #5. Biennial Gift Limit Adjustment: Adoption of Amendments to Regulations 18703.4, 18730, 18940.2, 18942.1 and 18943.

Chairman Getman noted that this regulation implemented the COLA adjustment for gift limits, increasing the limit to $340.00.

Commissioner Downey moved that the regulation be approved.

Chairman Getman seconded the motion.

Commissioners Downey, Swanson, Knox and Chairman Getman voted "aye". The motion carried by a vote of 4-0.

Item #6. Conflict of Interest Regulations: Material Financial Effect on Indirectly-Involved Business Entities - Adoption of Amendments to Regulation 18705.1.

Commissioner Swanson moved that the regulation be approved.

Commissoner Knox seconded the motion.

Commissioners Downey, Swanson, Knox and Chairman Getman voted "aye". The motion carried by a vote of 4-0.

Item #7. Pre-notice Discussion of Regulation 18329.5 -- Commission Advice Procedure -- Government Code sections 87300-87306.

Commission Counsel Jill Stecher explained proposed regulation 18329.5 was the culmination of two of the conflict of interest projects. The initial goal of Project A.2 was to determine whether the Commission should have a more expanded role in the formulation and oversight of local conflict of interest codes. Staff narrowed the project to address how Commission advice could

be streamlined, considering the need to balance the Commission's broad statutory authority with the Act's policy of formulating conflict of interest codes at the most decentralized level possible.

Ms. Stecher stated that the scope of the project was impacted by budget constraints and input from the public. Staff considered amending advice regulation 18329 to add provisions dealing with conflict of interest codes, but finally decided to propose a new regulation outlining advice procedures for conflict of interest codes. She noted that staff believed it to be necessary because with many advice requests put the Commission in the middle of an individual, an agency, and/or a code reviewing body.

Ms. Stecher stated that staff believed it would be better for the agency and/or the code reviewing body to be involved in advice requests since they are most familiar with the internal workings of an agency and its designated employees. The proposed regulation would help staff minimize the number of times they would have to decline giving advice.

Chairman Getman expressed concern about the policy direction of the regulation because some conflict of interest codes, particularly for local agencies, are overly broad and overly inclusive. Sometimes they do not reflect recent changes in the organization's structure or do not address consultants. She noted that the project arose because local agencies may lack the resources or information necessary to properly tailor the codes. She explained that the Commission has been asked to pursue an enforcement case against someone for failure to file an SEI when staff did not necessarily agree that they should have had to file an SEI.

Chairman Getman stated that the Commission ultimately takes the responsibility for making sure that the Act is properly administered and enforced. She suggested that the responsibility should include overseeing the formulation of local agency conflict of interest codes, and assisting employees who do not believe they should be included in a conflict of interest code. Currently, those employees would have to go to court to contest their inclusion in a code. She believed that § 83111 gave the Commission the role of primary enforcement and administration of the Act, and that questions about local codes should be answered through both informal and formal advice.

Chairman Getman believed that the Commission could do more to help without being disrespectful of the local agencies. She noted that the Commission would always have to rely on the local agencies for the information about the agency in order to determine who should be included in the code. However, the Commission could take ultimate responsibility, as a matter of law and based on the factual considerations provided by the local agency, for determining whether the agency's code is correct.

Ms. Stecher did not disagree, and noted that the regulation tried to develop an advice procedure that would bring all parties into the procedure. She noted that some individuals have approached the FPPC for help before discussing the issue with the local agency. She agreed that staff must work with the local agency to understand the duties of a designated employee in order to provide assistance.

Chairman Getman did not agree that individuals should not be allowed to request help from the FPPC unless the local agency joins in the request. She agreed that the individual should try to go to the agency first, but noted that the FPPC should help the employee even if the agency did not join in the request for help as long as the employee tried working with the agency first.

Chairman Getman also believed that the Commission should expand its informal assistance to formal assistance in these matters, because informal advice need not be followed. She noted that the Commisson could even issue opinions on the issue.

In response to a question, Ms. Stecher stated that regulation 18329 addresses both formal advice and informal assistance. She believed that staff was bound by those precedents that have been used for many years. Formal advice renders immunity to the requestor, while informal assistance does not. Staff suggested informal assistance in certain situations so that the advice would not be binding.

Chairman Getman questioned why the agency should not be bound by the Commission advice.

Ms. Menchaca did not disagree, and noted that a regulation with that provision would require that staff determine whether issuance of advice is the appropriate process. She explained that staff may have to respond to the advice request by other means than issuing advice, such as asking the local jurisdiction to amend their conflict of interest code. The regulation could specify those instances.

Mr. Wallace noted that this approach was not presented at the Interested Persons meeting, and suggested that it might be a good idea to present it to interested persons before bringing it back to the Commission.

Chairman Getman agreed. She noted that county counsels raised a concern last fall with problems associated with county supervisors who are code reviewing bodies and often do not fully understand what they should be doing. Serious reviews of the conflict of interest codes are often hampered by a lack of resources by the code reviewing body, and county counsels voiced a concern that the codes were not appropriately reviewed prior to their approval. They asked the Chairman for help on the issue, and she believed that it could be done in this regulation while maintaining the respect for the local agency that the statute requires. She believed that it would be appropriate to provide formal advice regarding whether a person should be included in a conflict of interest code, if they have tried to work with the agency and the code reviewing body but have been unsuccessful.

Ms. Stecher observed that advice requests often involve persons who have not attempted to work the issue out with the agency. She usually asks the person if she may contact the agency for more information and it is usually found to be acceptable.

Chairman Getman responded that it would be appropriate to require that the person go to the agency first.

Mr. Wallace noted that language could be developed to deal with the issue.

Chairman Getman suggested that the proposed language be sent to county counsels and, if necessary, conduct another Interested Persons meeting or simply solicit written comment.

Commissioner Swanson noted that it should not be essential for the agency to concur with the person's position. This suggestion would provide recourse to the individual if the agency does not agree.

Ms. Stecher noted that an employee can petition the code reviewing body if the agency does not agree with them. She agreed that it would be helpful to have input from the FPPC before doing so.

Chairman Getman explained that two years ago an attorney with a public agency tried to work with his agency and the code reviewing body, but asked the FPPC for advice at the same time because he thought that the code reviewing body was misinterpreting the law. In that case, staff saw it as an enforcement case, and had no ability to determine whether the individual should have been forced to file in the first place. It is difficult for the employee, because he or she does not usually want to take their employer to court. It is also difficult for enforcement staff because a designated person who does not file violates the Act and they would have to pursue an enforcement action even though they may not believe the person should have been required to file. Additionally, if the FPPC could issue advice, a violation and a fine could be avoided.

Mr. Wallace noted that the regulation was never intended to take away the Commission's ability to give technical support to the code reviewing body. Staff would develop language with an appellate approach.

Commissioner Downey supported a procedure ensuring that all parties involved in a conflict of interest code issue be aware of an advice request and have an opportunity to participate in the advice procedure. He did not want to see "sandbagging" and urged that persons seeking advice be required to approach the code reviewing body before seeking FPPC advice. He agreed that an individual should be allowed to seek formal binding advice from the FPPC if efforts to resolve the issue at the agency or code reviewing body level are unsuccessful.

Chairman Getman noted that it might mean an initial workload increase for staff, but thought that it might ultimately end up with a decrease in workload.

Ms. Menchaca stated that the advice process would require a workload increase, but believed that it would provide educational opportunities for local entities, thus providing a long-term benefit.

Chairman Getman asked staff to address how to proceed when someone has a filing obligation and is contesting it. Currently, staff does not issue advice when it appears that someone has already violated the Act.

Ms. Menchaca agreed, noting that it might be possible to take another course of action.

Chairman Getman stated that staff may determine that it would be appropriate to tell people to file and provide advice for their next filing. She noted that staff sometimes differentiates between past and future conduct when offering advice.

In response to a question, Chairman Getman explained that the Commission does not offer advice when a filing deadline is past because it is already a potential enforcement matter and advice is not rendered for pending enforcement cases. Usually that is a sound policy, but staff sometimes has situations where a public official who voted on a long term project contacts the FPPC to find out if they can vote on future stages of the same project. In those situations, staff differentiates between past and future conduct and answers questions related to future conduct so that the official knows whether he or she can participate on future issues without waiting for the enforcement action to finalize.

Item #8. Pre-Notice Discussion of Amendments to Regulation 18116: Reports and Statements; Filing Dates.

Chairman Getman noted that the Secretary of State's office provided additional information for the Commission's consideration, and staff has distributed copies of the SOS handout concerning the number of reports received during the late period.

Staff Counsel Hyla Wagner explained that the regulation dealt with a proposal by Colleen McAndrews to change the deadline for filing late reports that are due on a weekend. Current regulation 18116 extends weekend or holiday filing deadlines to the following business day, but that extension does not apply to late reports. The requirement that candidates file state and local late reports has been in the Act since its inception. Ms. Wagner stated that Proposition 34 added another 24-hour reporting requirement providing that any contributions or independent expenditures of $1,000 or more made during a 90-day period before a state election must be filed within 24 hours.

Ms. Wagner stated that the Commission was being asked to consider whether the weekend/holiday extension should be applied to the 24-hour reports. Ms. McAndrews proposed that they should, except on the weekend just before the election. Staff concluded that making the change would be within the statutory authority of the Commission, noting that Government Code § 6707 authorizes a weekend/holiday extension for documents filed with state agencies.

Ms. Wagner observed that the question was one of practicality of reporting and whether the change would significantly detract from the heightened disclosure of the 24-hour statutes. Staff contacted local filing officers to learn about their procedures. Certain agencies that have electronic filing and campaign disclosure websites believe that the 24-hour disclosure is useful. Others, however, do not have electronic disclosure, and indicated that the weekend filing makes no difference. Their staff does not work with the reported information until after the weekend/holiday, at which point the reports become a top priority.

Ms. Wagner stated that state candidates reported roughly $45 million in late contributions during the 16-day late period before the March 5, 2002 primary, averaging a little less than $3 million per day. Fewer reports were filed on the weekends than on weekdays. She noted that the SOS provided a spreadsheet with rough data regarding the volume of reports filed daily during the late period. She explained the report, noting that more reports come in during the week than on the weekend.

In response to a question, Ms. Wagner stated that, of the $45 million reported during the last reporting cycle, they did not know how much of the money came in during the weekends. The information would be available on the SOS web site. She suggested that, since the volume of reports on the weekends is smaller, the amount of money contributed would not be $3 million.

Chairman Getman did not necessarily agree. She noted that if there was a huge fundraiser on a Friday night, there could be an enormous amount of money coming in from that fundraiser over the weekend.

Ms. Wagner agreed, and noted that electronically filed reports are available to the public immediately, while faxed reports are not.

Caren Daniels-Meade, Chief, Political Reform Division for the SOS, stated that the chart fairly reflects the filings, though the figures had not been verified. She stated that the SOS took no formal position on the regulation. She noted, however, as more reports are filed electronically, the need for the amended regulation would diminish. She stated that 5.9% of all paper late contribution reports were filed on weekends during the 2000 primary election, which rose to 13.6% during the general election. In the 2002 primary, 22.4% of the paper reports were made on weekends. In the 2002 general election, 13.5% of the paper filings came in on weekends, and 14% to 17% of the electronic filings came in on weekends. She observed that there was a strong interest in seeing the disclosure on the weekends, noting that there were between 27,778 to 165,255 hits to the website on the weekends during 2002.

Ms. Daniels-Meade asked that, if the regulation is changed for paper, it also should be changed for the electronic filers so that it would not become too complicated. She also asked that the Commission not adopt different filing schedules for state versus local filings. She noted that filers will be able to use free software from the SOS within the next few months to disclose the information.

Tony Miller observed that the timeliness of some disclosure would be lost if the regulation is amended, but noted that the weekend before the elections is the key time and disclosure would have to be made on those weekends. He believed that Monday reporting is sufficient the rest of the time. He agreed with Ms. McAndrews that it is difficult for campaigns and treasurers to comply with the weekend reporting. No one can access the data for the local filings until Monday anyway, and he thought little would be given up if the regulation is amended.

Chairman Getman stated that the large jurisdictions of San Francisco and Los Angeles would not have to file on weekends, under the proposal, and electronic disclosure is available in those jurisdictions.

Mr. Miller agreed, noting the the SOS electronic filing is magnificent. However, he did not believe that Ms. McAndrews' approach would jeopardize full and timely disclosure. He stated that the disclosure would be more accurate if campaigns and treasurers had more time to file.

Chairman Getman observed that there would not be a problem if candidates did not fundraise on the weekends. She did not favor the proposal, noting that convenience is solely within the control of the candidates. If the treasurer does not want to be inconvenienced, he or she could make sure that fundraising does not occur on the weekend. As long as the fundraising occurs on the weekend, she believed that the people have a right to know about it. Historically, the Commission has consistently increased access and decreased the amount of time it takes for the public to know about the contributions. She did not believe that the issues warranted a change in that access.

Commissioner Downey stated that the Commission was charged with making sure that timely and accurate disclosures are made. However, the Commission had to be practical and provide convenience to the regulated community. The Commission had to balance the inconvenience with the fact that no one will look at the report until the following Monday in smaller counties like Tulare.

Chairman Getman noted that Los Angeles, San Francisco and state filings are electronic and available online immediately, and that the bulk of the late contribution activity would be in those jurisdictions where the information would be made available electronically. She did not believe that late contributions made over the weekend are a big issue in a small county.

Commissioner Swanson stated that, as a former FPPC Commissioner, Ms. McAndrews has a great deal of expertise on the issue. She noted that she has heard from treasurers that it is inconvenient to file the reports on weekends. The Commission's duty, however, was to ensure full disclosure for the public. The inconvenience is to a few, and the disclosure is to all of the people of California. The Commission's most important duty is to represent the people of California, and they should make every possible disclosure available to the public. Additionally, while the inconvenience is really to the hard-working persons of the campaigns, it is important to remember that creative donors will wait for that moment to dump in a very large amount of money to a campaign in order to confuse the opposition. She did not see a reason to circumvent a very good and very tight process that protects the public interest. She did not want to open the door for a wealthy donor to confuse the opposition. It is very important to keep the focus on public disclosure. Commissioner Swanson believed that the proposal by Ms. McAndrews was honest, sincere and justifiable, but did not favor the proposal.

Commissioner Knox supported the proposal.

Chairman Getman observed that the Commission was in a 2-2 split. She noted that, historically, enormous amounts of money have been contributed on the weekends. However, the new contribution limits under Proposition 34 will limit the amount of money that can be contributed at the last minute. She suggested that Commission may need to reconsider the issue if the amount of weekend contributions decrease.

Commissioner Downey suggested that the issue be brought back for adoption, allowing staff to further synthesize the information. He noted that he was not yet convinced either way on the issue, but was concerned about the delayed filings that would occur 10 and 17 days before the election, but not the weekend before the election. The proposal would leave open the possibility of manipulation, and he suggested that the reporting could be required to be done by noon on Monday.

Chairman Getman questioned whether the inconvenience of a few treasurers is worth the amount of work the Commission is spending on the issue. She explained that this issue has come before the Commission three times. It could be placed on the regulatory calendar when there is a fifth Commissioner, but she questioned whether it was worth the Commission's time.

Ms. Menchaca was uncomfortable advising the Commission that they had the authority to interpret 24 hours to be a business day.

Commissioner Swanson suggested that the issue could be postponed for two years, giving the Commission time to observe the impact of Proposition 34 and budget cuts. She believed it should not be brought back right away.

Commissioner Downey noted that the electronic filers should continue filing within 24 hours, and since electronic filing occurs in the major jurisdictions, the inconvenience would have to continue for the smaller jurisdictions. He agreed that the Commission's primary function was to provide information to the voting public. He agreed that the issue should not be brought back to the Commission for two years.

Ms. Wagner clarified that Los Angeles and San Francisco campaigns file by fax, not electronically.

Chairman Getman responded that Los Angeles and San Francisco filing agencies have staff come in to the offices on weekends and process the filings so that it is available to the public right away.

Ms. Wagner stated that San Francisco employees input the information on weekends, but that Los Angeles employees do not always make the information available on the weekend. She noted that they have a 24-hour independent expenditure reporting requirement that is not affected, but is required to be filed on weekends.

Commissioner Knox stated that the weekend filing requirement raises the barriers to voluntary work in campaigns without any corresponding benefit to the public, since, in many instances, the information is not available to the public until after the weekend. He believed that it should be recognized that, in the interest of disseminating information, the Commission sometimes makes it more difficult to participate in the process. If the Commission can lower the costs for the volunteers in the campaign without appreciably disturbing the ability of the public to find out what is going on in the campaign, he believed the Commission should do so. He believe this was one instance where it could be done and supported the proposal.

Chairman Getman stated that a treasurer simply has to send a fax to the filing officer, with typed or handwritten names, addresses and dollar amounts of contributions. If the fax does not go through, the treasurer simply has to keep the fax transmission report as proof that he or she tried to send the report. She did not see this as an enormous burden. The big burden is shouldered by companies who have set up treasurer shops and have huge amounts of money coming in for a number of campaigns. However, she pointed out that they are businesses paid well to do just that.

Commissioner Knox stated that his concern is for the individual in a small campaign who is trying to spend time with his family on the weekend but has to spend time preparing reports. Without any corresponding public benefit, he thought the barrier should be removed.

Chairman Getman stated that the proposal was to be tabled for two years.

Item #9. "Public Generally" Exception for Small Jurisdictions: Second Pre-notice Discussion of Amendment to Regulation 18707.1 or 18707.3 or Repeal of Regulation 18707.3.

Staff Counsel Natalie Bocanegra explained that regulation 18707.3 is one of several special public generally exceptions that supplement the public generally exception in regulation 18707.1. She reported that staff received both newspaper and letter comments in response to their public outreach on the issue, and researched possible amendments to the regulation in addition to exploring how the general "public generally" (PG) rule could be applied to small jurisdictions. Options A through C of the staff memo outline the different approaches.

Ms. Bocanagra stated that option A proposed deletion of regulation 18707.3, and requires that small jurisdictions apply the general PG exception without amendment. The option would treat officials of small jurisdictions the same as officials in larger jurisdiction. Officials could use the general exception and the "legally required participation" exception in order to participate in decisions after a material financial effect has been determined. This option was proposed because the Commission's Phase 2 decisions may have eliminated the need for the "small jurisdiction" exception. Ms. Bocanegra stated that staff supported option A because the general PG rule, along with the "legally required participation" rule seemed to offer sufficient relief for officials in small jurisdictions.

Ms. Bocanegra stated that option B would amend regulation 18707.3, and included five decision points. Option C proposed that regulation 18707.3 be deleted and regulation 18707.1 be amended.

Chairman Getman asked whether the problem was created by the residences or the businesses of the local officials.

Ms. Bocanegra responded that 18707.3(a) provides that the regulation pertain to principal residences. The Commission was asked to consider whether to expand it to include all real property interests.

Chairman Getman explained that the city of Yountville was asking the Commission to expand the regulation to include all real property interests, and pointed out that their objections to regulation 18707.3 would still exist unless the regulation was expanded.

Mr. Wallace noted that, historically, the exceptions only applied to principal residences because all officials generally have to reside in their jurisdiction.

Ms. Menchaca stated that staff recommended that the regulation not be expanded in scope to include more than personal residences.

Commissioner Knox stated that it was a major issue, and noted that it is easier to be sympathetic about residences than businesses.

Karen Troedsson, Deputy Town Attorney for Yountville, explained that it would assist them to have it apply to personal residences, but that it would be preferable to expand the scope to include real property interests. Yountville councilmembers live and work in the small jurisdiction. Unlike other small jurisdictions, people in Yountville do not necessarily commute to jobs in other jurisdictions. Consequently, Yountville people often have business property interests in their jurisdiction.

Chairman Getman opined that discussions involving a necessary residence of an official are different than discussions involving an official who votes on something that will directly affect his or her business from just 300 feet away. Those business conflicts seemed to encompass the kinds of conflicts that the Commission is charged to avoid in the PRA. The thrust of the Act provides that the official should not be voting on something so close to a financial interest of the official.

Ms. Troedsson responded that the business interests are covered in other areas of the Act, such as the source of income interest, the specific impact rules that apply to businesses as well as the general common law conflict of interest. The 500-foot rule should not automatically disqualify the official with real property within that 500 feet.

In response to a question, Ms. Troedsson stated that there is a huge impact on small jurisdictions when applying the 500-foot rule. It affects participation and the democratic process in the community. She explained that there are many situations where one, two or sometimes three council members have conflicts of interest. The Yountville commercial area is so small that an official who has a real property interest could be disqualified from participating on any decision in that area.

Chairman Getman pointed out that the Act provides that the officials should not be voting on decisions affecting a small business area if the official owns a business in that area.

Ms. Troedsson responded that, if it was reduced to 300 feet, and there was a genuine concern that a decision would affect an official's business, other regulations, such as the business interest or source of income, would address the conflict.

Mr. Wallace agreed that there is a different standard for business entities. Expanding the regulation to commercial property or undeveloped property that could have their value enhanced by an official's decision was a concern. Staff agreed that, while there is some logic behind exempting financial affects on a personal residence, expanding that scope to include commercial property in the exemption seemed to gut some of the basic purposes of the PRA.

Commissioner Knox observed that they were not asking for a free pass, but just to shrink the radius from 500 feet to 300 feet.

Chairman Getman responded that it would be almost the equivalent of a free pass. When the Commission established the 500-foot rule, it was an attempt to make the exception easier to apply. The trade-off, at that time, made it harder to find a conflict under the indirect scenario, but increased the area in which there was a direct affect and a conflict. She discussed the considerations of the Commission during those hearings, noting that they studied maps and heard much public testimony as they studied the issue. She noted that the Commission did not want to make different rules for rural jurisdictions versus urban jurisdictions because the testimony they heard at that time indicated that it would not be worth the complexity. City attorneys encouraged the Commission to keep the rules simple.

Ms. Troedsson agreed that the rule was simpler, but stated that it affected the democratic process on smaller jurisdictions. Since the 500-foot rule was arbitrary, she questioned why it should not be smaller for a smaller jurisdiction.

In response to a question, Ms. Troedsson stated that Yountville has about 1.56 square miles and slightly under 4,000 residents. However, she noted that it included the veteran's home, which is a state owned property, and the city council does not have jurisdiction over that property. If the veteran's home is not considered, the city would be about 1 square mile in size and would have a population of about 2,500 to 3,000. She did not know the number of businesses in the downtown area.

Eric Knight, a councilmember from Yountville, stated that there are about 60 small businesses within a small area. He explained the history of Yountville, noting that its geography was limited by the agricultural preserve. The veteran's home was the largest employer, and there were four hotels and two shopping areas. The commercial areas are very concentrated in the downtown area.

In response to a question, Mr. Knight stated that none of the members of the city council currently owned those hotels or businesses in the downtown area. He owned a small lumberyard and hardware store in the community that was not in the downtown area.

Mr. Knight encouraged the Commission to continue refining the small jurisdiction regulations, because changing the scope from 300 feet to 500 feet in the Phase 2 program created more situations where officials were conflicted out of participating in decisions. He believed that the 300-foot rule was more manageable for small jurisdictions and would not encompass such a large part of the community. As an example, he noted that the city of Napa was 28 square miles

and the 500-foot rule would work there. In smaller towns, however, the rule has an impact on their ability to participate.

Commissioner Knox requested examples of decisions that Yountville officials had to abstain from participating in.

Mr. Knight responded that Yountville did not currently have a lot of projects going on because of a water moratorium, but that there were some hotel projects, residential development projects, and a floodwall project that were impacted by the 500-foot rule. He noted that, in a small community, people know what is going on and are very aware of the councilmembers participation in decisions. He believed that the elected officials should be encouraged to participate as often as possible. The 500-foot rule has limited that participation.

Commissioner Knox noted that the Yountville issues may not be problems if the decisions affect everyone equally. He asked staff whether Mr. Knight, as a councilmember, could vote on a proposal to repave the sidewalks if the sidewalk was in front of his business as well as other businesses.

Mr. Wallace responded that the "business entity public generally" exception may provide an exception for that example. He noted that there was discussion about expanding that exception to include other interests in addition to personal residences. The "predominant industry" exception may also apply.

Commissioner Knox noted Yountville's concern that small jurisdictions may not have the resources to navigate through the more complicated regulations to see if an exception applies.

In response to a question, Mr. Wallace read from regulation 18707.1(b), and concluded that the exemption in that section might apply to the example posed by Commissioner Knox, providing the percentages in the regulation worked for that case.

Chairman Getman noted that, if all of the sidewalks in the downtown area needed improvement and the first improvements were in front of the councilmember's business, the PRA would require that the official not participate because there would be a material financial effect on the official's business.

Commissioner Knox noted that the PRA says that because, for the moment, the Commission says it.

Chairman Getman pointed out that a majority of the Commissioners, during the Phase 2 considerations, believed that officials in small jurisdictions should be allowed to vote on anything as long as there was full disclosure. However, the PRA would not allow it because it says that if the decision has a material financial effect on an official's economic interest, the official cannot vote. That is the core principle that the FPPC is charged with upholding and there is no doubt that it will result in the disqualification of elected officials from voting. The PRA was designed to do that.

Mr. Knight supported the rules, but noted that his family has lived in the area for generations and that he has a local business and inherited residential rental properties in the area. His experience brought the issue to the forefront in the community. The rule affects most of the councilmembers through their primary residences. He asked the Commission to continue discussing the concept of the small jurisdiction, and recognize that the 500-foot rule may have made the process much better for large communities, but has reduced participation significantly for smaller jurisdictions. Narrowing the distance would increase participation in small communities. Mr. Knight urged the Commission to refine the rules for small jurisdictions by population or geography to encourage more participation.

Commissioner Swanson stated that public service in small jurisdictions can be more difficult than in larger jurisdictions because everyone knows you. She asked whether the people of Yountville approached Mr. Knight to ask that the rule be changed, or whether the city council is requesting the change so that they can participate more often.

Mr. Knight responded that the impact of the change from 300-feet to 500-feet has been to require that at least one councilmember is conflicted out of making land-use decisions. That is a concern in the community because they want the councilmembers to participate. The local paper has written about the issue. People told him that they want him to participate, recognizing that the difference between 300-feet and 500-feet is just a 1/2 block or a block away. It is difficult for a community to understand how a councilmember can no longer participate in decisions that they used to be able to make. The change required that city officials request the FPPC's help on participation issues, and it has created a burden on them.

Commissioner Swanson asked whether the city officials ever utilized the "legally required participation" exception.

Mr. Knight responded that the city council used that provision to achieve a quorum on different occasions when one councilmember was conflicted out by income, and two others had primary residences between 300-feet and 500-feet from property being considered for a zoning change. Members drew straws to determine who could participate, and the resulting vote on whether to change zoning from residential to commercial varied depending on whose turn it was to vote.

Chairman Getman noted that primary residences were the focus of the small jurisdiction exception, but that the exception does not apply now if the property is within 500 feet. The two questions before the Commission were whether to limit it to primary residences and, if so, whether to adjust the borders from 500-feet to 300-feet.

Ms. Troedsson presented copies of newspaper articles and editorials from the local Yountville papers addressing the issue. She noted that it is a huge issue for Napa county, making front-page news.

Michael Martello, city attorney for the city of Mountain View and on behalf of the League of California Cities City Attorneys, agreed that there are other exceptions for business entities. Some city attorneys indicated that there was a need to expand the regulation, noting their frustration with the 500-foot rule. They have not yet heard from many city attorneys on the

issue, however. Since smaller communities do not necessarily have the resources to pursue the issue, the League of California Cities was going to form a subcommittee to help Yountville. They identified the need to continue to work on the issue. Mr. Martello noted that FPPC staff raised some valid concerns over changing the borders back to 300-feet.

Mr. Martello observed that, if the "public generally" exception applied, the Act does not distinguish between economic interests. He explained that he has been in contact with city attorneys and that desert communities indicated that the 500-foot rule has been an issue for communities comprised of big compounds with golf courses. A person's home may be in one part of the compound, but the owner is considered to have an ownership interest in the entire compound. The end result is that the official living in the compound cannot participate in decisions that are much more than 500-feet from their residence. Mr. Martello noted that he had not received a lot of feedback from the cities despite his requests for input, and he guessed that small cities did not have the resources to get involved in the issue.

Chairman Getman responded that the public usually lets the Commission know when it has done something wrong. She questioned whether the issue was primarily a Yountville issue.

Mr. Martello responded that city attorneys in other towns perceive the problem, but they have decided to live with it. He noted that the benefits of the 500-foot rule have been significant, because it removed the 500-foot to 2500-foot area that was previously in the regulation. Prior to that, many people did not want to participate because they did not want to deal with that part of the rule. With the elimination of that provision, people are participating again. However, there are times when one or two councilmembers cannot participate. He pointed out that small jurisdictions have concentrated housing, and that there is a check-and-balance in those areas because everyone knows everyone else's business. If there is a conflict of interest, the common law conflict of interest rule will apply and city attorneys will advise the official not to participate.

Commissioner Knox disclosed that his firm has done some work for the city of Mountain View within the last year. He asked whether a 300-foot rule for residences would solve the problem.

Mr. Martello responded that it would substantially help because the residence is the biggest part of the issue.

Chairman Getman asked the Commission whether it was interested in expanding the exception to include businesses, noting that she was more comfortable limiting the exception to residences.

Commissioner Swanson agreed with the Chairman, noting that prices of some homes are as big as industries in some parts of the country. Since everyone must have a home, she favored exploring an exception for residences.

Commissioner Knox agreed.

Commissioner Downy questioned whether the 500-foot rule was derived from regulation 18704.2 because that regulation states that property is directly involved if it is within 500-feet of the property subject to the decision. Using the 8-step process, an official within that 500-foot

rule must identify an exception to the rule in order to participate. He discussed the public generally exceptions in regulation 18707.1, and noted that regulation 18707.3 deals with exceptions for small jurisdictions. However, regulation 18707.3 is meaningless since it only applies when the decision does not have a direct effect, and 18704.2 states that it is a direct effect if it is within 500-feet.

Chairman Getman agreed.

Commissioner Downey noted that there was no proposal to change regulation 18704.2 to change the 500-foot direct effect rule to 300-feet for small jurisdictions. The previous Commission was aware of the problems when it created the 500-foot rule. He stated that there was no question that more conflicts would arise in small communities, but he believed that the degree of conflict was the same in the small community as it would be in a large community. He suggested that regulation 18707.1 provided exceptions, and the 10% rule under 18707.1(b)(i) or the public generally exception could be used for officials in small jurisdictions. If those do not work for the official, then a conflict exists that should disqualify the official.

Chairman Getman stated that staff's option would be to amend regulation 18707.1 to provide for the special circumstances of small jurisdictions, by making it easier to meet the requirements of that exception.

Commissioner Downey noted that attachment 3 of the staff memo proposed amendments to regulation 18707.1.

Chairman Getman agreed, noting that it would add a subdivision (c) to the regulation addressing principal residences in small jurisdictions. It would provide that when a decision affected at least 100 properties in a small jurisdiction, within a particular area, in the same way that the official's property was affected, then the public generally exception would apply.

Mr. Wallace added that subdivision (c) is a sort of merged version of (b), taking a lot of concepts and moving them into a single regulation. He suggested that option A may be a better approach because a standard is in existence for the public generally exception, and he questioned why there should be a different standard for small jurisdictions. Mr. Wallace explained that when staff initially approached the materiality issue during Phase 2, there was a huge area of uncertainty between 500-feet and 2500-feet, where disqualification often occurred even when it was not required. The initial regulation was adopted to deal with that area. Option A proposes that the same exception be applied for all jurisdictions.

Commissioner Downey agreed with option A. He stated that 18707.3 should be eliminated and small jurisdictions should be treated the same as large jurisdictions, given the fact that conflicts will arise more often. He saw no reason for officials in small jurisdictions to escape the rule when the degree of conflict is the same.

Chairman Getman asked whether the Commission agreed that there were special circumstances for principal residences in a small jurisdiction, and whether there needed to be an accommodation for residences in a small jurisdiction since they are in a more compact area.

When the Commission changed the rule from 300-feet to 500-feet, they increased the area of direct conflicts, and the public generally exception is too large for the small jurisdictions. This could be accommodated by changing the public generally exception to allow it to apply in small jurisdictions when the decision affected 100 or more properties in the same manner.

The Commissioners discussed the current requirements to meet the exception.

Chairman Getman stated that the 500-foot versus 300-foot rule would not change with option C. However, officials in small jurisdictions could get the exception if they can prove that the decision affects 100 other properties in the same manner.

Steve Russo, FPPC Enforcement Chief, stated that they supported option A because it would be very difficult to justify why an official in a large jurisdiction is prosecuted and an official in a small jurisdiction is not when the same conflict exists. The same amount of intentional or negligent conduct and public harm would exist in both jurisdictions.

In response to a question, Mr. Russo stated that, if the Commission chose to allow the small jurisdiction exemption change, a narrow exception involving only residences would be better. He noted, however, that it still would not address the issue of disparate treatment. He questioned why the current public generally exception does not relieve the small jurisdiction of the harmful result, noting that they are asking for the change in order to make it easier to participate, but that an injustice had not been identified. If small jurisdictions need more relief than what is provided in the public generally exception, he suggested that the public generally exception may need to be changed to make it easier to apply or to deal with a specific situation. He did not believe that a blanket solution that allows people with a conflict of interest to participate was the answer.

Chairman Getman stated that if the public generally exception was applied in Yountville when an official's property was within 500-foot of the subject property, there would need to be an effect on 10% or more of the property owners for the exception to apply. Since that would amount to about 100 properties in Yountville, the result would be the same as the staff's proposal in option C, consequently that option would not be necessary to help Yountville. However, Yountville did not think the public generally rule worked because their councilmembers are not able to vote often enough.

Ms. Troedsson stated that there are special rules for different people throughout the FPPC regulations. The Commission has given preferential rules to principal residences of public officials in small jurisdictions, and encouraged the Commission to consider that a need existed to address this important problem in small jurisdictions.

Chairman Getman stated that the special rule would be the same as the general rule in the Yountville case.

Ms. Troedsson responded that the special rule would set a lower threshold for the similar effect part of the public generally analysis. She believed that would work better for small jurisdictions. She stated that the severe effect that the rules had on small jurisdications and their democratic process warranted a special consideration for them.

Chairman Getman stated that the proposed special rule in option C and the general rule would require that 100 other households be similarly affected, but the special rule would impose additional requirements, and appeared to be worse for Yountville.

Ms. Troedsson noted that there are several decision points that the Commission was considering and that the better choice for Yountville would depend on how the Commission decides those points.

Chairman Getman explained that everyone agreed that the current special rule is useless because it never applies. If an official's personal residence is within 500-feet of the subject property, the current public generally exception would provide an exception as long as 100 other homeowners in the jurisdiction are similarly affected by the decision. The option C special rule would apply the same rule, but would require the 100 homeowners to be in the same area, and would also require that the official's property be no more than 1 acre in size.

Ms. Troedsson agreed, but noted that other small jurisdictions might have a different perspective.

Chairman Getman stated that the other jurisdictions may have more people, and the 100 homeowners in option C would be better than the 10% requirement of the public generally exception.

Chairman Getman suggested that, since the Commission decided that they would only consider residences in the special rule and that the existing regulation should be eliminated, staff should explore whether the current public generally rule would work or whether it should be amended to help small jurisdictions. She asked staff and Mr. Martello to explore the question and seek input for further consideration by the Commission.

Commissioner Swanson noted that this would be helpful to small communities in the south bay area in southern California as well as the desert areas discussed earlier by Mr. Martello. She offered her help in identifying them. Commissioner Swanson noted that primary residences should not include a wing in a hotel, but should mean a single residence home.

Ms. Bocanegra responded that there is a definition of "principal residences" that is included in the current small jurisdiction exception, and if that rule is deleted, staff may need to consider keeping the definition.

Chairman Getman stated that staff could address it at the next meeting.

Ms. Menchaca added that the Commission adopted a substantially similar rule when it addressed the public generally exception and the landlord tenant issues. Regulation 18707.9 addresses ownership of three residential units, excluding personal residences, and she suggested that the Commission might want to explore that rule.

Ms. Troedsson pointed out that the Commission has found, in the past, that small jurisdictions deserved a special rule for the principal residences of their public officials. Now, with the new

rules, that impact is even greater. Elimination of that preference for small jurisdictions would be problematic for them.

Chairman Getman asked that Ms. Troedsson further study the proposals to make sure that is true. She understood that the difference between 300-feet and 500-feet has had an effect on Yountville, but noted that if the general public generally rules are applied, she believed that Yountville's issues might be resolved. Under that rule, if a residence is within 500-feet of the subject property, the official would only have to prove that 100 residences in the entire town of Yountville were similarly affected by the decision in order to use the exception. She asked that Ms. Troedsson study it to see if it would provide the necessary relief, and, if it does not, advise the Commission to let them know what needs to be done.

Ms. Troedsson stated that she would submit something in writing.

The Commission adjourned for a break at 11:45 a.m.

The Commission reconvened at 11:50 a.m.

Item #10. Pre-notice Discussion of Amendments to Regulation 18991: Audits of Campaign Reports and Statements of Local Candidates and Their Controlled Committees.

Commission Counsel Jennie Eddy stated that the regulation specifies the procedures that should be followed by the Commission in selecting local candidates and their controlled commitees for audit by the Franchise Tax Board (FTB). Staff proposed that the regulation be amended to change the source of data that shall be used to measure the population of the local jurisdictions as part of the audit selection process.

Ms. Eddy explained that the amendments correct deficiencies in the current audit selection process, specifically inequitable audit pool selection. Staff proposed that an annual population report prepared by the Department of Finance (DOF) be used to determine the groupings for counties and cities, replacing the federal dicennial census currently being used. She recommended that the Commission approve the proposed amendment.

In response to a question, Staff Accounting Specialist Bill Marland, stated that FTB has decreased the number of audits conducted in the last year, but did not know whether it related to budget issues.

There was no objection from the Commission.

Item #17. *In the Matter of Larry Danielsen*, FPPC No. 00/273.

Chairman Getman reported that Mr. Danielsen sent a document to the Commission earlier in the day, noting that she had not yet had a chance to review it but would try to before the Commission voted on the decision.

Commission Counsel Steve Meinrath explained that the ALJ proposed decision and the staff report were before them and offered to answer any questions.

There were no questions.

Chairman Getman stated that the Commission would take the reports under submission during the closed session break.

The Commission adjourned for a lunch break at 12:00 p.m..

The Commission reconvened at 1:23 p.m.

Items #18, #19, and #20.

Item #18. *In the Matter of Fermin Cuza*, FPPC No. 02.985.

Item #19. *In the Matter of Alan Schwartz*, FPPC No. 01/162.

Item #20. *In the Matter of Mattel, Inc.* FPPC No. 02/984.

Staff Counsel Julia Bilaver explained that the three cases were extraordinary because they involved a toy company that unknowingly made contributions to various candidates, a senior executive with the company who violated company policy to make the contributions, and a consultant who aided and abetted the senior executive by double-billing the toy company and acting as an intermediary for many of the contributions.

Ms. Bilaver stated that, with help from Alan Schwartz, Mr. Cuza used Mattel money to make 56 contributions totaling $52,000 to 15 statewide candidates, 6 local candidates and a political party committee, while failing to disclose that Mattel was the source of the contributions. Mr. Cuza used Mattel's streamlined program for clearing products through U.S. Customs. Under that program, Mattel automatically paid invoices through the LAXMI Group (LAXMI) without any formal review. Mr. Cuza directed Mr. Schwartz to submit an invoice to Mattel and one to LAXMI for services. She explained how the activity covered a 3-year period, which ended when a Mattel employee discovered one of the contributions and reported it to Mattel. Mattel then investigated the contribution and disclosed the violations they were aware of to the FPPC, the FEC and the LA City Ethics Commission (LACEC).

Ms. Bilaver explained that the FPPC and LACEC conducted a joint investigation, leading to the discovery of 56 laundered contributions. Over half of those contributions were one-time contributions made to several candidates for small amounts, therefore the public harm in those cases was less than usual in these types of money-laundering cases. Staff worked with the FEC and LACEC to develop a just result.

Ms. Bilaver recommended Commission approval of the fines outlined in the stipulation. Because Mattel failed to keep track of the contributions, staff recommended a penalty of $72,000 for 48 counts of campaign reporting violations. Mattel would also be paying LACEC $60,000

and the FEC $94,000. Staff recommended Mr. Schwartz be fined $58,000 for aiding and abetting the contribution scheme. Mr. Schwartz would also be paying the LACEC and the FEC for violations of their laws. Ms. Bilaver explained staff's recommendation that Mr. Cuza be fined $88,000 for his violations, noting 26 of the counts overlapped with 26 counts that LACEC is charging. The two agencies are each charging less than the maximum penalty for those 26 violations. Mr. Cuza will be paying LACEC $112,000 for violation of local contribution limit laws. Mr. Cuza will be paying the FEC $185,000 for violation of federal laws.

Ms. Bilaver summarized that the three respondents will pay a total of $930,000 in fines for their violations.

In response to a question, Ms. Bilaver stated that Mr. Schwartz already paid his penalty in full. Mr. Cuza made a down payment of $40,000 and has agreed to pay the remainder in payments. His daughter has agreed to be the guarantor of those payments.

In response to a question, Ms. Bilaver stated that 26 counts resulted in a mitigated penalty, recognizing that both the FPPC and the LACEC had an interest in the counts. The remaining 30 counts received the maximum fine.

In response to a question, Ms. Bilaver stated that Mattel was not charged the maximum fine because they brought the case to the FPPC and staff found no evidence that anyone at Mattel other than Mr. Cuza knew about the contributions. Staff was concerned that Mattel had no system in place to prevent this type of violation, so they believed some sort of penalty was warranted.

In response to a question, Ms. Bilaver did not know whether the local district attorney was filing criminal charges in the case.

In response to a question, Ms. Bilaver explained that Mattel set up a business process to pay for customs-related expenses without going through an approval process at Mattel. Mr. Cuza used that system to pay bills that should not have been paid. She noted that Mattel has reevaluated that practice and substantially changed it.

Chairman Getman stated that it was good to see the other agencies working with the FPPC on the violations, noting that she was glad to see that the respondents were paying substantial fines.

Commissioner Swanson agreed.

Chairman Getman moved approval of items #18, #19, and #20.

Commissioner Knox seconded the motion.

Commissoners Downey, Knox, Swanson and Chairman Getman voted "aye". The motion carried 4-0.

Item #17. *In the Matter of Larry Danielsen*, FPPC No. 00/273.

Chairman Getman announced that the Commission voted to adopt the ALJ decision in its entirety by a vote of 4-0.

Item #11. Pre-notice Discussion of Amendment to the Rulemaking Process -- Regulation 18312.

Assistant General Counsel John Wallace explained that this proposed change in procedure would streamline the regulation process by reducing the number of meetings held in connection with the adoption of regulations. He described the current process, which included an Interested Persons meeting, a pre-notice hearing and an adoption hearing. Staff urged a limited change to the process that could be made without amending the statute or the regulation that controls the regulatory process.

Mr. Wallace proposed that the Commission have a basic one-meeting rule for most items it considers. He suggested that the Commission give staff discretion to determine whether Interested Persons meetings or the pre-notice hearing are necessary. Neither of those meetings are mandated by the regulation or by statute. If the Commission agrees with the process, additional meetings can still be conducted whenever necessary, and the Commission will have at least two opportunities to request additional meetings.

Chairman Getman stated that the regulation should be amended anyway, because there needed to be a provision to send e-mail notices on regulatory items. She agreed with the streamlined process and did not think the Commission would have to consider the alternative streamlined process proposed by staff.

Mr. Wallace stated that decision point 5 addressed the alternative process, noting that it is a little too complicated for the benefit it offered. The other four changes recommended by staff would substantially streamline the processes.

There was no objection from the Commission to streamlining the process without the alternative process outlined in decision point 5.

Commissioner Downey noted that regulation 18312 allowed the streamlined process without amendment. He agreed that the e-mail notice would be helpful, and believed that a reference allowing staff to have initial discretion would be appropriate to add at the same time. He suggested changing the words "the proposed pre-notice or adoption" on page 2 line 12 to "a pre-notice hearing, if any, or an adoption".

Mr. Wallace agreed.

Chairman Getman suggested the following changes:

- The language on page 2, lines 10 and 11 be changed from "public meeting (an "interested persons" meeting) in order to" to "public interested persons meeting to".
- The sentence beginning on line 13 be changed to, "Notice of this meeting shall be posted on the Commission web site and mailed (either in tangible form or electronically) to

every person who has filed a request to be included on the applicable mailing list and to such other persons or groups the Commission believes may be interested."

- Lines 17 and 18 be changed to make it clear that the Commission will be holding a public meeting, as opposed to scheduling one.
- Line 13 on page 3 be changed to add the language "(either in tangible form or electronically)".

Chairman Getman encouraged further discussion of written comments, agreeing that they must be submitted to the Commission in a manner that allows the Commission time to read them or be presented as part of an oral presentation made at the hearing.

Commissioner Downey pointed out that he did not want a regulatory provision to prevent the Commission from considering a written comment submitted late.

Mr. Wallace responded that the proposal's language would not allow the Commission to consider written comments submitted late, noting that differentiating between comment letters can create problems.

Chairman Getman stated that comments not received by 5:00 p.m. the day before the meeting do not necessarily get to the Commissioners in time for them to read the comments, and noted that staff does not always get to review them either.

Commissioner Swanson questioned whether oral comments by phone could be considered.

Mr. Wallace responded that oral comments were meant to refer to those made at the hearing.

Chairman Getman suggested that the language on page 4, lines 1 and 2 be changed to read, "written comments will not be considered that are submitted to the Commission later than 5:00 p.m. of the business day preceding the day of any hearing unless they are given to the Commission as part of an oral presentation made at the hearing."

Mr. Wallace agreed, noting that the actual time could be reviewed by the Commission before the final adoption.

Ms. Fishburn asked whether the deadline would apply to pre-notice hearings, and suggested that the deadline only apply to the adoption hearing.

Chairman Getman agreed.

Scott Hallabrin, from the Assembly Ethics Committee, noted that he would bring the issue to the members and let the Commission know at a later time whether that would be a problem.

Item #13. Nonsubstantive Amendments to Regulation 18700: Basic Rule; Guide to Conflict of interest Regulations.

Commissioner Downey suggested that the title of the regulation be changed.

Mr. Wallace stated that the title referred to the guide to the 8 steps, which is in the text of the regulation.

There was no objection from the Commission to deleting the chart.

Item #14. Approval of Proposition 34 Fact Sheet #3.

Technical Assistance Division Chief Carla Wardlow explained that staff has received questions about transfers, attribution, and carryover of funds under Proposition 34. They developed a fact sheet to help the public with those questions and were presenting it to the Commission for approval. She noted that the first issue addressed in the fact sheet dealt with the Commission's decision to not apply § 85306 to elections held before January 1, 2001, and whether that same decision should apply to the November 5, 2002 election for statewide candidates.

Chairman Getman pointed out that those issues did not involve a decision point for the Commission to consider. She explained that staff thoroughly explored the issues in order to ensure that there was nothing in the statute that allowed statewide committees to be treated differently in the fact sheet. Doing so would require a statutory or regulatory change. Chairman Getman noted that there was a legislative proposal that would impose contribution limits on the old committees.

Ms. Wardlow stated that page 6, question 3 of the proposed fact sheet needed additional clarification. She suggested that the language of the last sentence be changed to read, "Contributions over these limits may be made to a political action committee or political party, but must be used for purposes other than making contributions to state candidates. In addition, a candidate may not make a contribution to a committee for the purpose of making independent expenditures to support or oppose other candidates." The change would better track the language of the statute.

Ms. Menchaca agreed that it clarified the fact sheet.

In response to a question, Ms. Wardlow stated that the word "to" should be added to the first sentence after the word "subject."

Ms. Wardlow explained that question 6 on page 6 raised issues discussed in a comment letter from Russell H. Miller. Mr. Miller asked how to treat money raised before January 1, 2001 by a legislative candidate or officeholder and placed into a separate account, when additional monies were raised and put into the account, then monies were spent from the account. He questioned whether the original monies could be transferred without attribution. The proposed fact sheet currently states that expenditures made since January 1, 2001, must be subtracted from the old money.

In response to a question, Ms. Wardlow explained that staff advised people during 2001 that monies held on January 1 could be transferred without attribution, however staff did not believe that the question of expenditures was raised or considered at that time.

In response to a question, Ms. Menchaca stated that the statute does not set a time limit for the transfers without attribution.

Chairman Getman stated her concern about transferring monies on January 2, 2001 that were already transferred once on January 1, 2001. The argument for that policy was that they transferred the whole amount and can prove that they still have the whole amount even though other monies have been raised and spent from the account.

Ms. Wardlow stated that two questions are addressed in the fact sheet. The first deals with raising and spending money not associated with a future election in the first committee account. Staff addressed, in another part of the fact sheet, situations where that money was transferred to a 2002 account and used, commingled or attributed to the 2002 election. In those cases, the fact sheet indicates that the money should be treated as 2002 money.

Chairman Getman agreed that it made sense. Committees could keep the money, place it into a Proposition 34 election account, and then the money is Proposition 34 money, not 2000 money. It could not be transferred twice.

Ms. Wardlow noted that officerholders are coming up against termination deadlines, and may not yet know what office they will be running for and will need to move the money someplace. However, that was a separate question.

Chairman Getman noted that the issues are related because they involve acknowledging that Proposition 34 is in effect. The old committees and old monies have to be eliminated so that everyone is operating under the same rules. She did not want people who operated before Proposition 34 to have a war chest of money that can be transferred from committee to committee. Therefore, if a committee spent money, she believed it should be deducted from the pre-Proposition 34 amounts. However, that would treat someone differently based on when the money was transferred. She saw nothing that provided a deadline for transferring the money and suggested that the Commission may want to consider doing that by regulation.

Ms. Wardlow suggested that the question and answer could be deleted from the fact sheet, so that the Commission can address it in some other manner.

Kirk Pessner, paralegal from the law office of Russ Miller, stated that on December 31, 2000, Assemblymember Simitian had money in a campaign account. That account was not closed at that time, but will be required to be closed by August 31, 2003. They understood that the money can be transferred one time to a future campaign without attribution and that any subsequent monies would be subject to the $3,000 limit. Two years later they were told that expenses must be deducted from that money. Mr. Pessner stated that Technical Assistance Division advised that money could be raised and spent using that account as long as the balance did not go below the December 31, 2000 amount. In that case they would still be able to transfer that amount to another committee at a later time without attribution.

Chairman Getman responded that the purpose of the regulation was to ensure that candidates do not have to give up monies already collected under an old system. The Commission presumed that candidates would use the funds in the next election and did not anticipate the creative ways that would be found to continue using the old committees. She agreed that the Commission had not explicitly told candidates that they had to use the monies for the next election.

Mr. Pessner stated that they were also concerned that the question and answer in the fact sheet refers to a legislator and then refers to the Fishburn letter which refers to a statewide official prior to the time that the funds became surplus. The letter indicated that funds spent subsequent to November 6, 2002 would have to be deducted, but was issued two years after assembly and senate candidates were in that position. Mr. Pessner found no discussion of deducting expenditures from the amounts that could be transferred without attribution in any advice letters.

Commissioner Downey stated that it seemed appropriate to seek regulatory action fairly quickly in order to address the issue.

Chairman Getman agreed that there needed to be regulations specifying when the one-time money had to be spent. She believed that once the committee was terminated and the money transferred it should no longer be treated as special money. Committees should be able to use it one time, and it should be specified in the regulation. The Commission should also consider whether to place a limit on whether that needs to be done by the next election.

Ms. Menchaca asked the Commission for some discussion of the interpretation of § 85306. The public comment seemed to indicate that "funds possessed" refers to an amount held on a particular date. Whether to look at the amount or the actual funds held at a particular time is important because the funds can be considered depleted if expenditures are made.

Chairman Getman noted the public perception that it should not matter if the amount went down due to expenditures as long as the money was put back into the account at the time of the transfer.

Ms. Menchaca believed that a strict interpretation of "funds" would not necessarily lead to a conclusion that it should be the amount. She requested guidance from the Commission.

Diane Fishburn, from Olson, Hagel and Fishburn, commented that it should refer to the funds possessed on January 1, 2001 for legislative candidates or November 6 for statewide candidates. She suggested that when a candidate had $50,000 on January 1, 2001, and spent $10,000, only $40,000 could be transferred even if fundraising occurred after January 1, 2002. She did not believe that the expenditures could be paid back to the fund and that only those funds possessed could be transferred.

Ms. Fishburn preferred to have the answer in the fact sheet as soon as possible, and suggested that the Commission allow that funds possessed on January 1, 2001, or November 6 for statewide candidates, could be lawfully transferred without attribution unless those funds had been spent. If it cannot be accomplished through the fact sheet, then she urged the Commission to find a regulatory answer as soon as possible.

Ms. Fishburn stated that the Commission discussed the transfer and carryover regulations previously, and there was some discussion of a "one-time" transfer. Staff proposed a subdivision in the regulations dealing with the candidate who withdraws. If someone left the Senate with funds prior to January 1, 2001, intending to run for statewide office in 2006 (but not yet knowing which office), they would have to create a committee and move the funds before the funds become surplus. They would have to specify the office they would be running for. If they later change their minds and decide to run for a different office, they should be able to transfer all of those funds without attribution. She questioned how that attribution would be done.

Chairman Getman recollected that the Commission previously decided that they could not address the issue of running for a different office because the statute did not give them any leeway to do so.

Ms. Fishburn pointed out that the Commission did not choose to say that transfers of the carryover monies were limited to a one-time transfer either.

Chairman Getman agreed, noting that the Commission did not think it could be done twice.

Ms. Fishburn responded that the discussion addressed the question of how to handle the candidate who changes his or her mind, but that the Commission chose not to answer the question at the time. If a person has not actually undertaken a campaign for the new office and simply decide to run for a different office instead, she believed that they should be able to transfer those funds without attribution.

Chairman Getman stated that Proposition 34 is the law and that people will have to live within that law.

In response to a question, Ms. Fishburn stated that the statute and the holding of the court in the *SEIU* case suggest that those funds should be able to be carried over without attribution.

Commissioner Downey stated that it would be difficult to draft a statute providing only one transfer should be allowed, unless a person changes their mind and then an exception can be provided.

Chairman Getman pointed out that any monies spent from the fund before the candidate changed his or her mind would bring up questions about whether they actually ran for that office, making the statute very difficult to craft.

Commissioner Downey noted that Ms. Fishburn's point was well taken, but that it would be very difficult to implement.

Tony Miller enthusiastically endorsed the comments of Mr. Pessner and Ms. Fishburn and encouraged the Commission to make a decision on the issue quickly.

Commissioner Downey noted that this issue is the first step to several doors and agreed that it should be resolved quickly.

Chairman Getman stated that the Commission had a responsibility to interpret the statute correctly, and they should not have to give more weight to the opposite views when those were not made clear at the time of the regulation hearings. She saw no harm in requiring attribution because those candidates would then be running for office under the same rules as those candidates who did not run for office prior to 2001. The Commission did not set up the old committees in order to let the old rules work forever, nor to make it easier for some candidates than others, nor to let the old committees remain open in perpetuity. It was meant to provide a transition, and committees were going to have to transition.

Chairman Getman suggested that staff prepare an emergency regulation for consideration at the January meeting. The regulation should address whether the transfers should be one-time, whether there should be any limitations on when that should happen, and the definition of "funds on hand."

Commissioner Swanson asked that staff also address how to be fair to everyone in view of the possible "war chests" available to pre-Proposition 34 candidates.

Chairman Getman noted that the statute requires that those candidates be able to have an advantage, but that the advantage should be limited. The statute says that the transfers can be made once.

Steven Kaufman, of Smith Kauffman, stated that there is a distinction when a candidate moved money into another committee, and without additional fundraising or comingling of funds, decide to transfer the money a second time because they decide to run for a different office. He believed that they should be able to transfer the money a second time.

Chairman Getman responded that it should not be allowed because it turns a transition vehicle into a war chest for incumbents who ran under the old rules.

Mr. Kaufman noted that people who ran in 2002 would benefit from it, and did not see why people who ran in 2004 or 2006 should not have the same benefit.

Chairman Getman stated that the question and answer should be taken out of the fact sheet and the issue brought to the Commission at the January meeting as an emergency regulation.

Ms. Wardlow commented that questions seven and eight on page six might also be deleted for the same reason. The issues are a little narrower because the monies in those two questions were actually transferred and used for the 2002 election. Based on the *Gould* advice letter, staff said that once the committee has been redesignated it becomes a 2002 committee.

Chairman Getman stated that those questions and answers should not be changed.

Commissioner Downey agreed, but noted that there would be further discussion of § 85306(b) and that it could be better to wait.

Chairman Getman stated that the answers could include the note that it may changed in January.

Commissioner Swanson suggested that the items be discussed in January.

Chairman Getman stated that noting the Commission's January considerations in the fact sheet would provide the public with a warning that the answer could change.

Ms. Wardlow noted that the fact sheet could be held until January.

In response to a question, Ms. Wardlow stated that there could be a number of candidates that would be relying on information in the fact sheet before the January meeting.

Commissioner Knox stated that it would not, then, be a good idea to hold the fact sheet. He was reluctant to include the warning that the rules could change, and thought it better to remain silent on the issues, implicitly endorsing previous advice.

Chairman Getman questioned whether leaving the information out would be an implicit endorsement of previous advice.

Commissioner Knox noted that if the Commission were not considering the fact sheet, the *Gould* advice letter would provide the operative approach of the Commission. He did not believe that it was a good idea to issue a fact sheet that was subject to revision in mid-January.

Commissioner Downey noted that it involved 2002 committees.

In response to a question, Mr. Kaufman stated that the scenario he presented involved a person who was not a candidate for office in 2002. The person's committee had expenditures related to maintenance of the committee, but no actual expenditures made toward election in 2004.

Commissioner Downey observed that questions seven and eight of the fact sheet dealt with different situations. He believed that both of those questions could remain in the fact sheet.

Chairman Getman agreed.

Commissioner Knox stated that the answers were satisfactory, but that it was not satisfactory to change the answer to qualify it as subject to immediate revision.

Chairman Getman stated that questions seven and eight and their answers would be kept in the fact sheet. The fact sheet should have one correction to question three, and question 6 on page 6 should be deleted.

Commissioner Downey moved approval of the fact sheet with the corrections outlined by Chairman Getman.

Commissioner Knox seconded the motion.

There being no objection, the fact sheet was approved.

Ms. Menchaca noted that Technical Assistance Division staff did a great deal of complex work in a short period of time to develop the fact sheet and commended Ms. Wardlow and Technical Assistance Division staff for their effort.

Item #12. Regulatory Calendar for 2003.

Mr. Wallace explained that most of the proposed changes were required because of agenda changes. He pointed out the addition of a proposal to address an interpretative regulation for § 89519, the surplus funds statute. He explained that surplus funds have always been subject to strict use limits, creating an incentive for candidates and elected officials to move money out of accounts before the funds became surplus. Recently, questions have arisen regarding how those rules interact with Proposition 34 transfer rules. Staff recommended that the Commission enact a regulation to deal with those questions.

In response to a question, Mr. Wallace explained that the regulation was rejected by OAL because they did not agree with the Commission's interpretation of a deadline. The Commission sued OAL and now OAL does not interpret the statute. He did not believe there would be any problem with the new regulation. There was a current regulation that was not approved by OAL and serves as a basis for policy in that area. Some of that regulation would probably be enacted in the new regulation.

Mr. Wallace stated that Vigo Nielson's comment letter regarding an amendment to regulation 18427.1), asked the Commission to clarify a notice sent to major donors. He proposed that it be added to the annual technical clean-up packet and be further investigated.

Chairman Getman stated that Mr. Nielson's point was well taken.

Mr. Wallace pointed out that the discussion of "express advocacy" was included in the calendar in anticipation of the Supreme Court accepting the petition in the *Gray Davis v. American Taxpayers Alliance* case. Staff received notice that the petition was denied, and will remove that item from the regulation calendar. They will present a revised calendar in March 2003, with an additional proposal addressing whether the Commission needs to react to the petition denial with a regulation.

Chairman Getman suggested that the Commission ask the Attorney General's office whether the Commission is bound by the Court of Appeal's decision with respect to the FPPC regulation or whether the Commission can continue to rely on the *Furgatch* decision.

Mr. Wallace explained that further adjustments would be made to the regulation calendar based on decisions the Commission made earlier in the meeting including the decisions not to extend

filing deadlines that fall on weekends or holidays, changing the conflict of interest hearing to a later date, and adding the emergency regulation for the January meeting.

In response to a question, Ms. Menchaca stated that the January calendar would not have further adjustments because the January calendar dealt with legislative mandates that must be considered early in the year.

Chairman Getman moved that the regulatory calendar be adopted.

Commissioner Downey seconded the motion.

There being no objection, the regulatory calendar was approved.

Item #15. Approval of 2002/03 Statement of Economic Interests (Form 700) and Revised Campaign Disclosure Forms.

Ms. Wardlow presented the Commission with proposed technical updates to the SEI Form 700 and Form 700 certification, the Form 700A, and the Form 700U. She explained that the updated forms were necessary because reporting thresholds and gift limits changed. She also presented five campaign disclosure forms for updates.

Commissioner Swanson moved that the forms be approved.

Commissioner Knox seconded the motion.

Commissioners Downey, Knox, Swanson and Chairman Getman voted "aye". The motion carried by a vote of 4-0.

Item #16. Translation of Forms and Manuals

Executive Director Mark Krausse presented forms 700, 410, 460, 501 and 4 informational booklets that had been translated into Spanish/English documents. He noted that they were drafts only, and if the Commission agrees, staff will continue to refine the documents.

Chairman Getman explained that the English version was on the left side and the Spanish version was on the right side of the form.

In response to a question, Mr. Krausse stated that the instructions were in Spanish because the forms were also available in English on the regular form. The instructions could have included the English translation, but it would have made the document very lengthy.

Chairman Getman stated that it was a great idea.

In response to a question, Mr. Krausse stated that the English version of the instructions could be added if the Commission desired it.

Commissioner Knox agreed that it was a good idea. He questioned whether the translations might contain ambiguities between the English and Spanish.

Mr. Krausse responded that staff was concerned about that possibility, which was why they are using a company that does the translations of the ballot materials and has expertise in the area. He noted that Ms. Menchaca, who speaks Spanish, found one term that did not seem correct, and staff was going to have Spanish-speaking staff persons familiar with this area of law review the forms.

Chairman Getman suggested that the forms and manuals regulation could clarify that the English language version is the interpretation that will be used if ambiguities exist.

Commissioner Knox thought that would be both prudent and fair.

Commissioner Swanson agreed.

Mr. Krausse agreed and suggested that staff look to see how other agencies approach that question.

In response to a question, Mr. Krausse stated that the pamphlets were in Spanish only, but noted that they can be reformatted.

Chairman Getman noted that she has been asked for translated pamphlets at speaking engagements.

In response to a question, Mr. Krausse stated that staff decided to start by translating the most commonly used forms. The forms would be available on the web site, or in hard copy in the 8th floor reception area.

There was no objection to publishing the forms.

Chairman Getman noted that the school bonds web site for the last election included materials in ten different languages, including Tagalog. Virtually all the candidate web sites had materials in Spanish, and many had materials in other languages as well.

Item #24. *In the Matter of Earnest Governmental Relations Consulting and Curtis J. Earnest,* FPPC No. 00/734.

Ms. Bilaver stated that this case involved the failure to file eight lobbying reports by a lobbyist, noting that these types of cases are not very common.

In response to a question, Ms. Bilaver stated that the fine was reduced from $16,000 to $8,000 because the maximum penalty has never been imposed in previous lobbying cases, and that staff typically recommends fines of $1,000 to $1,500 per report not filed. The average is about $1,100 to $1,200 per count. Staff saw nothing particularly aggravating in this case. The respondent had

filed other reports in a timely manner, and the same client was reported in all of the 8 cases. The respondent's medical problems created a mitigating factor.

Commissioner Downey noted that the lobbyist was a fairly sophisticated party who missed eight lobbying reports, even after receiving several notifications from the Secretary of State's Office. The only mitigating factor was unspecified ongoing personal medical problems. He asked for an assurance from staff that they believed the medical problems were compelling. Otherwise, Commissioner Downey viewed the case as somewhat aggravating because the respondent knew better and did not file after receiving the warnings.

Ms. Bilaver responded that staff looked at a higher fine initially, and tried to stay consistent with past lobbying cases. There were only a small number of cases that could be compared to this one. Staff believed that the medical problems warranted a slight mitigation.

Chairman Getman asked whether the medical problems were compelling.

Mr. Russo responded that staff found them to be compelling but not an excuse. The fine amount was enough to communicate to the respondent and other lobbyists that fines will be levied if reports are not filed. Staff has been more active recently in this area, in part due to the efforts of the SOS office referring the matters to staff. Enforcement staff is trying to set a consistent standard in these lobbying cases, and is trying to send the message that lobbyists are sophisticated players and will be fined for violations. In this case, staff found the mitigating factors to be sufficient to warrant the proposed fine, but asked whether the Commission wanted staff to propose higher fines for lobbyist non-filing cases.

Commissioner Downey expressed his concern over the number of missed filings and warnings in this case. He noted that the warnings should not have been necessary because this was a sophisticated filer who knew about the reports. The medical problems were the only mitigating factor that supported the reduction in the fine.

Ms. Bilaver added that the Commission recently fined the respondent's partner the same amount for 12 counts of the same violation. Respondent was aware of that case during the negotiations for this case.

Commissioner Swanson commented that the partner's fine should provide more reason to impose a higher fine in this case.

Ms. Bilaver explained that the previous violation occurred several years ago, at about the same time period as the respondent's violation. The respondent argued that the Commission should fine consistently. The 12 counts resulted in a $14,000 fine, with no mitigating factors.

Chairman Getman summarized that a repeated failure to file constitutes an aggravating circumstance. A $1,000 fine may be appropriate for one or two missed filings, but eight missed filings constituted aggravating circumstances. She noted that the SOS is sending more referrals to the FPPC, and that three ex-wives of lobbyists were referring their former spouses.

In response to a question, Ms. Bilaver stated that, if the Commission chose to disapprove the stipulation, staff would have to renegotiate an agreement or start an enforcement action. The Commission could suggest an appropriate fine, but staff would have to negotiate an agreement for that fine amount with the respondent.

In response to a question, Ms. Bilaver stated that the respondent was not partners with the respondent in the previously discussed case at the time of the violations.

Mr. Russo observed that the argument for approving the stipulation was the issue of consistency, noting that the Commission imposed a similar penalty for similar violations during the same time period (1997, 1998, and 1999) and the parties were aware of it.

In response to a question, Ms. Bilaver stated that the Commission considered the stipulation for the first case in June or July 2002.

Chairman Getman moved approval of the stipulation.

Commissioner Downey seconded the motion.

Commissioners Downey, Swanson, Knox and Chairman Getman voted "aye". The motion carried by a vote of 4-0.

Commissioner Swanson asked that staff reevaluate the fine amounts for future cases.

Item #31. Fair Political Practices Commission v. National Republican Congressional Committee Non-Federal (California) and Donna Anderson, FPPC No. 02/021.

Chairman Getman noted that this was an informational item.

Item #32. Legislative Report.

Executive Director Mark Krausse stated that Chairman Getman and Senator Johnson discussed a legislative fix last year for § 85316, proposing that all committees, regardless of their pre- or post-Proposition 34 status, would have a Proposition 34 contribution limit. The proposal outlined in the staff memo would allow over-limit contributions for debt retirement, but once enough money was raised to pay off the debt, committees would be subject to Proposition 34 limits. A second part of the proposal would allow office-holder fundraising for last-term members, providing that those funds could only be spent for limited purposes and could not be transferred to other committees.

Chairman Getman stated that, if the Commission approves the two proposals, staff would seek an author for them. She noted that it is difficult to meet the most minimal office-holder expenses during the last term of office, and that, with appropriate safeguards, there should be no problem allowing it. She explained that many other jurisdictions with contribution limits have specific office-holder accounts.

Mr. Krausse stated that the rest of the legislative proposals were technical clean-up and staff would seek an author for the proposals through the Assembly and Senate Elections Committees as a committee bill. Those typically are approved on consent in the Legislature.

Commissioner Knox moved that the legislative proposals be approved.

Commissioner Downey seconded the motion.

There being no objection, the legislative proposals were approved.

Item #33. Publications Process/Calendar.

Publications Editor Jon Matthews explained that the Commission does not currently have an agency-wide policy coordinating the production, revision or distribution of its publications, nor does it have an annual schedule of publications. He noted that budgetary constraints limit the funds available for physically printing and mailing educational and outreach materials. Staff proposed that the Commission adopt the proposed publications policy and 2003 publications calendar.

Mr. Mathews explained that the goal of the policy was to enhance publications workflow of publications projects, while ensuring high levels of accuracy and the flexibility to respond to changes to the law or regulations in a timely manner. The policy included a publications schedule, a listing of the publications to be included on the schedule. He described those publications, adding that the policy would not supercede the regulations that currently govern the approval of forms and manuals. The policy also included the process for approving new and revised major publications, and addressed the distribution of publications through a web-based system and a proposed list-server system. The policy would include a standardized review and revision of existing publications and a clear system for identifying publications when initially approved and revised.

Chairman Getman explained that this project would acknowledge how much time it takes to do these major projects. That time could then be built in to the workload of the agency, acknowledging that one of the agency's primary tasks in 2003 will be to rewrite the campaign manuals. This will have an impact on how many other projects staff can address. She noted that it would ensure that all FPPC publications go through a standardized review process, although all publications will not require Commission approval. Only publications that have gone through the review process and included on the publications list will be made available to the public. She explained that it took Mr. Matthews a long time just to put the list together.

Chairman Getman stated that the list will ensure that each FPPC division is coordinating with the other divisions on their publications. The project was a result of the executive staff planning process. Because there would be new Commissioners and budgetary constraints in 2003, staff did not want to embark on a major regulatory program. They decided instead that it would be an ideal time to improve the web site and implement the publications policy.

Chairman Getman added that Mr. Matthews was a great writer and editor and could make the policy work.

Mr. Mathews added that other staff members in the agency have done terrific work writing the publications.

Commissioner Swanson supported the policy, noting that it was a great idea.

There was no objection to the publications policy.

Item #34. Executive Director's Report

There being no questions, the report was taken under submission.

Item #35. Litigation Report

Chairman Getman announced that the hearing on the *Agua Caliente* motion to quash was postponed until January 8, 2003, at 2:00 p.m. The motion papers filed and the amicus brief of Common Cause are available on the FPPC web site.

Item #36. Pending Litigation (Gov. Code sections 11126(e)(1) and Gov. Code section 11126(c).)

Chairman Getman reported that this item was discussed in closed session.

Item #37. Discussion of Personnel (Gov. Code § 11126(a)(1).)

Chairman Getman reported that there were no personnel items discussed.

The meeting was adjourned at 3:30 p.m.

Dated: January 17, 2003.

Respectfully submitted,

_____

Sandra A. Johnson
Executive Secretary

Approved by:

_____

Chairman Getman